

FILED '09 JUN 30 17:05 USDC-ORE

2

3

4

5

6

7

9

10

11

— • —  
•  
•

23

24

—

25

190

## APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: CHRISTOPHER L. CARDANI  
United States Attorney's Office  
405 E. 8th Avenue, Suite 2400  
Eugene, OR 97401  
(541) 465-6771  
chris.cardani@usdoj.gov

CHARLES F. GORDER, JR.  
United States Attorney's Office  
1000 S.W. Third Avenue, Suite 600  
Portland, OR 97204-2902  
(503) 727-1021

FOR THE DEFENDANT: LAWRENCE H. MATASAR  
Lawrence Matasar, P.C.  
621 S.W. Morrison Street  
Suite 1025  
Portland, OR 97205  
(503) 222-9830  
larry@pdxlaw.com

STEVEN T. WAX  
Federal Public Defender  
101 S.W. Main Street, Suite 1700  
Portland, OR 97204  
(503) 326-2123  
steve\_wax@fd.org

Also present: Dave Carroll  
Colleen Anderson  
Pirouz Sedaghaty  
Summer Rife

1 (Tuesday, April 14, 2009; 1:44 p.m.)

2 (The following proceedings were had in chambers.)

3 P R O C E E D I N G S

4 THE COURT: Well, are we ready to give this  
5 case a real trial date now?

6 MR. CARDANI: We hope so.

7 THE COURT: Okay. And have you talked about  
8 that?

9 MR. CARDANI: Yes, we have.

10 MR. MATASAR: We have.

11 MR. WAX: We have.

12 THE COURT: I'm not shocked.

13 MR. MATASAR: We met for about an hour in the  
14 prosecutor's office this morning.

15 THE COURT: It's good to have good lawyers.  
16 What do you hope to do then?

17 MR. MATASAR: We can't say that we agree.

18 THE COURT: I get to veto.

19 MR. MATASAR: Steve has the notes. Why don't  
20 you redo our discussion.

21 MR. WAX: We thought --

22 THE COURT: Yes.

23 MR. WAX: -- that we would propose that this  
24 Friday we would file a pleading with you that will seek  
25 clarification and some expansion on your ruling on the

1     classified information.

2             THE COURT:   Okay.

3             MR. WAX:   We, with respect to the classified  
4     information, also need a ruling from you on the piece  
5     that relates to our ability to communicate, Larry and  
6     me, and the two of us with Mr. Sedaghaty about the  
7     document that we had provided.

8             We think that after resolution of the issues  
9     related to classified material that we would need --  
10    figure -- 60 days and then file substantive motion  
11    challenging the search.

12            And when we were talking with the government,  
13    they had been suggesting maybe June, which would be more  
14    or less the same time frame for that, assuming that  
15    resolution on the classified issues takes place  
16    relatively quickly.

17            From that point, we had slightly different  
18    views on trial date.  We're in agreement, I think, that  
19    we need -- we both need to have a pretty clear sense of  
20    what the trial would look like farther in advance of the  
21    trial than is normally the case.

22            We're both anticipating some potentially pretty  
23    complex evidentiary issues that relate to admissibility.  
24    There might be some *Daubert* hearings with respect to an  
25    expert or experts the government might present.

1           There are likely to be issues related to  
2 witnesses from overseas, issues related to the  
3 admissibility of some of the evidence that the  
4 government might want to present. They gave us some new  
5 discovery this morning that includes some things that  
6 come from Russian FSB, the successor to the KGB.

7           So there are a host of trial type evidentiary  
8 issues that are likely to consume a fair amount of time  
9 and also whose resolution we think is important to help  
10 us in knowing what the landscape of the trial is like.

11           Our sense, that meaning the defense, Larry and  
12 I, are suggesting that a realistic trial date is next  
13 winter. That if we deal with the suppression issues  
14 over the summer, if we can have, perhaps, a real, you  
15 know, heart-to-heart status conference first part of  
16 September where we can then, you know, get a clear  
17 picture from the government in terms of experts and  
18 witnesses and define those issues, have some substantial  
19 evidentiary hearings maybe the first or second, you  
20 know, week in November, then we can have a trial  
21 February-ish. That's what we would propose.

22           The government, at least this morning, was more  
23 interested in a trial sooner than that.

24           MR. CARDANI: Do you want to speak for us?

25           MR. GORDER: Certainly. Your Honor, we agreed

1 with Mr. Wax that we thought that trying to get the  
2 substantive motions filed, briefed, and heard before the  
3 summer ends would be a good idea. And we were thinking  
4 that they could file motions in early June. We would  
5 ask for three or four weeks to respond, and try to get  
6 the hearing in July sometime before Mr. Cardani takes  
7 off for Italy.

8 And we just thought that a trial date in the  
9 fall sometime, mid-October to mid-November, somewhere in  
10 that time frame, would be appropriate to get the case  
11 moving.

12 We all realize that the defendant came back to  
13 the country in August of 2007. So the case has been  
14 pending for over a year and a half now. And we're just  
15 trying to force ourselves forward.

16 THE COURT: Right. I'm hopeful that both sides  
17 in this matter will be willing to show their hand to --  
18 for trial to the extent that we don't have to interrupt  
19 the trial with hearings.

20 MR. MATASAR: And, Your Honor, that's one of  
21 the issues here that has always been apparent is that  
22 this is not an open file case like the others, so we  
23 don't know their witnesses, and that's the exact concern  
24 we have.

25 THE COURT: I have concern for you, too.

1 MR. MATASAR: Well, that's great. We  
2 appreciate that, Your Honor. And so that's why we have  
3 this different time frame.

4 We don't know -- when we hear for the first  
5 time today about a secret Russian agent who listened in  
6 to a phone call in 2000 and then destroyed the tapes,  
7 and, you know -- or the tapes were destroyed, that is an  
8 issue in itself.

9 One of their experts, so-called terrorism  
10 expert, we saw him in the release issue hearings, we  
11 probably want -- or we do -- or we will want to have a  
12 *Daubert* hearing on him. He doesn't speak Arabic.  
13 There's a lot of -- he doesn't have a Ph.D.

14 So these are real substantive, meaty issues  
15 that we'll have once we know who their witnesses are.  
16 If we get their witnesses at the last minute, you are  
17 right, that's our concern. So we join you in that.

18 THE COURT: And I will tell you that if we have  
19 a *Daubert* hearing, it's not going to come during the  
20 trial. Everything is going to happen in advance.

21 MR. WAX: I think, Judge, all of us are hopeful  
22 that we can deal with a lot of that sort of stuff and  
23 evidentiary issues and chains of custody and  
24 admissibility and coconspirator issues, you know,  
25 several months in front of the trial is what seems to us

1 to make the most sense. I mean, normally we do that  
2 stuff, you know, a week or two weeks before the trial.

3 But, for example, if the government is going to  
4 be permitted to bring to the courtroom live a Russian  
5 FSB agent to testify, which at least we understood this  
6 morning is something that they are seriously  
7 considering, that raises a host of issues about our need  
8 to try, in whatever way we can, to do some investigation  
9 in Russia. It raises another set of discovery type  
10 issues.

11 You know, we were also talking about, you know,  
12 the potential for other witnesses from the Middle East  
13 the government may want to call or we may want to call.  
14 And to get witnesses here from overseas, and from some  
15 of the less than democratic countries from which some of  
16 them may be coming, that's not going to happen  
17 overnight.

18 So that's why we're thinking, you know, try to  
19 deal with the more standard, if it is standard,  
20 suppression type issue over the summer, and then get  
21 us -- you know, defining what the scope of the trial is  
22 so that we can have motions, which we're thinking, you  
23 know, we could be in court for a week on motions to  
24 suppress -- you know, motions in limine.

25 THE COURT: What do they do in there without



1 me? We'll open the door.

2 MR. MATASAR: Physically we'll open the door.  
3 We can get you there physically there listening to  
4 something else. I'll be --

5 THE COURT: I'll be surprised if that happens.  
6 Okay.

7 MR. CARDANI: Judge, we don't have any trouble  
8 with sharing witnesses much sooner than later in this  
9 case. We realize they've got some work to do.

10 THE COURT: Yeah. Let's say that we get  
11 suppression motions by mid-June, all right? And  
12 whatever the issues are, suppression motions are really  
13 not time-consuming for a court to decide one way or the  
14 other. It sort of becomes clear during the hearing.

15 So when would you be willing to tip your hand  
16 enough to give these folks something to respond to by  
17 way of trial motions?

18 MR. CARDANI: Trial --

19 THE COURT: Not --

20 MR. CARDANI: You mean like witness lists?

21 THE COURT: Witness lists, expert lists,  
22 exhibit lists, that sort of thing.

23 MR. CARDANI: You know, I think that they can  
24 predict 90 percent of our witnesses right now. It's not  
25 a big mystery as to who the majority of our witnesses

1 are going to be. I wouldn't want to be locked into, you  
2 know, a set witness list.

3 THE COURT: Well, we want it to be inclusive,  
4 in other words. And I would want you to think about  
5 whether -- what your position is going to be on that.

6 You know that I require witness lists and you  
7 know that I do it even though the Ninth Circuit says I  
8 can't enforce it, but it makes trials go better, so I'm  
9 going to continue to do it. You can't expect me to  
10 follow the Ninth Circuit on that.

11 MR. CARDANI: Judge, along those lines, you say  
12 you don't like surprises, this trial, we will tip our  
13 hand, we will tell them who we are calling well in  
14 advance. They can do their work.

15 Depending on who they may call may raise the  
16 possibility of rebuttal witnesses --

17 THE COURT: Yeah.

18 MR. CARDANI: -- that are overseas witnesses.

19 THE COURT: Sure.

20 MR. CARDANI: And so to the extent that we can  
21 have them tipping their hand as well as to who these  
22 people may be, that's going to help shape the trial and  
23 prevent delay.

24 And there really is a substantial likelihood of  
25 that happening depending on who they call.

1 THE COURT: Are you going to give us your  
2 witnesses?

3 MR. MATASAR: No. We were talking about other  
4 scheduling matters.

5 MR. WAX: Well, in terms of experts, Judge, we  
6 will, you know, provide the government with what we've  
7 got.

8 THE COURT: Off the record.

9 (Discussion held off the record.)

10 THE COURT: Go ahead.

11 MR. WAX: I'm sorry, I forget where we are.

12 THE COURT: Are you going to tell us enough of  
13 your witnesses and experts so that they can respond? I  
14 don't want to pull a jury in and send them home for two  
15 weeks.

16 MR. WAX: That won't happen. You know, I  
17 appreciate Chris's response, we'll give them the stuff  
18 in plenty of time in advance. What -- I give the same  
19 answer. You know, in terms of experts, you know, we all  
20 know that there are accounting issues in the case. And  
21 at some point, we will have, you know, identified and  
22 firmed up accountants. And we will, you know, provide  
23 sufficiently in advance of trial, you know, who our  
24 accounting experts are, and the essence of their  
25 testimony is required under Rule 16. We're not going to

1 play games about that.

2 In terms of, you know, potential -- whatever we  
3 call them, you know, terrorism witnesses, at this point,  
4 we don't know if we're going to be bringing in any  
5 terrorism type witnesses. We're going to have to know  
6 that sooner rather than later. But when we get from the  
7 government, as we did today, a, you know, set of reports  
8 which open up an entirely, you know, new area of the  
9 case, to a certain extent, we go back to, you know,  
10 square one in terms of our assessment of what we need to  
11 do.

12 You know, there are some fact witnesses who are  
13 in, you know, the Middle East, who are potentially  
14 desirable by either side. And, you know, we touched on  
15 that briefly in our conference this morning.

16 At this point I don't know if the government  
17 knows who it's planning on calling and neither do we.  
18 And what we do will depend in part on what they do.  
19 They have the ability to, you know, work the government  
20 to get people in from overseas far more easily than we  
21 do.

22 THE COURT: Please tell us who your accounting  
23 type people and that sort of people are in time so we  
24 don't have to interrupt the trial.

25 MR. WAX: Don't worry about that, Judge. That

1 will happen. Absolutely.

2 THE COURT: All right. Are you using outside  
3 financial people or are you using people from the IRS?

4 MR. CARDANI: IRS.

5 THE COURT: Yeah. Who are you using?

6 MR. CARDANI: And also -- well, their  
7 accountant -- their accountant is a fact witness. He'll  
8 be a witness. We also have an IRS witness named Wooten.

9 MS. ANDERSON: Yes, Greg Wooten, TEGE.

10 MR. CARDANI: So those are the financial  
11 experts.

12 MS. ANDERSON: Yes, he's Tax Exempt.

13 MR. CARDANI: Anybody -- and that's it, right?

14 MS. ANDERSON: Uh-huh.

15 MR. CARDANI: And then we have a terrorism  
16 consultant expert, who they know very well. He  
17 testified in the detention hearing, Evan Kohlmann. We  
18 plan on using him as a witness. No mystery there. And  
19 we have a computer expert that's an IRS guy, Jeremy.  
20 They've talked to him. We've shared information. So  
21 that's all right out there.

22 The only new wrinkle to any of this is the  
23 stuff that we came back from Russian with, and that is  
24 this Russian discovery, and the possibility of us being  
25 able to get somebody from Russia here who may or may not

1 testify direct in the case in chief. We just don't  
2 know. They've got that information now. It's been  
3 translated. And they'll understand it.

4 But most of the issues are out there and self-  
5 evident, and there are no secrets. We don't have any  
6 secret witnesses. We don't have --

7 MR. MATASAR: There are no secrets except  
8 secrets, the classified secrets.

9 MR. GORDER: We're not planning on introducing  
10 the secrets.

11 MR. MATASAR: Right.

12 MR. CARDANI: Yeah. So I think that in terms  
13 of your preparation, absent the Russian stuff, that it  
14 is what it is on the expert side. And like I said,  
15 we'll be willing to turn over witness lists sooner  
16 rather than later.

17 What I'd like to avoid is us turning over a  
18 witness list, getting nothing in return, and then having  
19 a trial date dissolve, you know, and then that just, you  
20 know, leads to problems. So if we have a finite trial  
21 date and then we can back it up from there and say  
22 what's a reasonable time to give them anything? And  
23 they've got, by the way, a lot of our witness statements  
24 already, a lot of the traditional Jencks Act material  
25 has been turned over in seven batches of discovery.

1 But we'll agree to do that, turn it over well  
2 in advance of trial, but we'd like to have some  
3 predictability that we've got a hard trial date.

4 MR. WAX: We don't disagree with that, Judge.

5 MR. MATASAR: We don't disagree with that. We  
6 think, though, remember -- well, we -- if there is going  
7 to be well in advance the *Daubert* hearing, and we're  
8 going to have to investigate the Russian stuff, we've  
9 been sort of waiting sort of anticipating we were going  
10 to have more discovery in the classified part than we  
11 ended up with, so we've been kind of waiting to do a lot  
12 of the international investigation and such that we've  
13 done.

14 So in our view, October is just too soon to  
15 have a trial. So we would much prefer the after  
16 Christmas approach rather than the October approach  
17 because there is so much international investigation to  
18 do.

19 The accounting case we can try in June or July,  
20 I would say July, at the end of July, but as evidence by  
21 the -- as we said, Judge, the release hearing in this  
22 case, you know, typically a release hearing takes  
23 15 minutes. This one had experts from -- on the  
24 telephone, and took hours and hours and days, so it's  
25 anticipated to be a big, difficult matter. So that's

1       why I think October is too soon.

2               Plus, if we get the date we ask for now, it's  
3 going to be pretty hard to ask for a continuance later  
4 on.

5               THE COURT: You can ask.

6               MR. WAX: I mean, our goal would be not to  
7 because if we're dealing with overseas witnesses and  
8 we're dealing with the logistics of getting people into  
9 the country, you know, if we have a firm date that we're  
10 aiming for, and we all know that's when it's happening,  
11 then we know when we've got to get the people here,  
12 which may not be logistically possible in October which  
13 is five months, six months.

14              MR. MATASAR: One more thing, I'm sorry, Judge,  
15 but we've had nothing but good relations with the  
16 government in this case. I would say that's fair to  
17 say, the lawyer-to-lawyer discussions, just at the very  
18 highest level. But the burden on us -- for them to say,  
19 okay, now it's time to get the case going, they  
20 literally told us today they went into the Lubyanka  
21 Prison in Moscow, the two of them, and got like the red  
22 carpet treatment. People were waving to them,  
23 et cetera. We won't get that.

24              For us to investigate this stuff is just orders  
25 of magnitude more difficult. So it just takes a while



1 for us to do it. And I think October, again, is just  
2 unrealistic. We have good investigators.

3 THE COURT: I was locked in that courthouse  
4 elevator in Moscow.

5 MR. MATASAR: Very nice. Well, maybe they look  
6 at prosecutors different, but they got the red carpet  
7 treatment. They didn't get locked in the elevator.  
8 They got high fives and waves.

9 THE COURT: Their recordkeeping is kind of  
10 fascinating.

11 MR. MATASAR: Not that fascinating if they  
12 destroyed these tapes.

13 MR. GORDER: Well, they indicated that it's in  
14 the ordinary course of business, after five years.

15 MR. MATASAR: Oh, really?

16 MR. WAX: I see. That's the old Soviet  
17 ordinary course of business, destroy the tapes.

18 THE COURT: One of the fascinating things,  
19 actually, about their system, because when you are there  
20 to -- I was there supposedly to teach judges how to do  
21 jury trials. And they have to -- not to say too much,  
22 they were quite careful to point out to me that the  
23 first jury trials in Russia were under Alexander I.  
24 There was a hiatus in there. But -- and when I started  
25 talking about getting things to trial, they said our law

1 requires that the case be tried in 60 days, but that  
2 means 60 days from when the file is sent from these file  
3 rooms to a chambers. And I looked at some files.  
4 They'd been smoldering there for a long, long time. I  
5 couldn't read them, but I could read numbers. All  
6 right. It was fascinating, really.

7 Okay. Just a second here. How long do you  
8 anticipate for the trial itself?

9 MR. CARDANI: Up to two weeks is what our best  
10 estimate is right now without knowing what kind of  
11 defense to expect.

12 THE COURT: All right. I want to try the case  
13 in November if we can get there. Let me just try these  
14 dates on. I know it's not exactly what you folks have  
15 asked for.

16 Actually, Lea, would you make double  
17 photocopies of this, so they don't try to write it down  
18 here. We can just walk through it. And we'll just  
19 relax for a second.

20 (Discussion held off the record.)

21 THE COURT: All right. We'll go back on the  
22 record. You see, I've suggested suppression motions be  
23 filed by the 12th of June; that the hearings on those  
24 motions be the 13th of July; and that witness list and  
25 expert lists on the 10th of August; the trial motion

1 hearings on September 1st.

2 MR. WAX: Is that filed or to be in court?

3 THE COURT: That's to be -- well, I'm sorry, I  
4 misspoke. That is just the motions to be filed on the  
5 1st, and the hearing on 9/22. Yeah, you can see what I  
6 did, I followed the hearings twice. And then October  
7 13th, proposed jury instructions, voir dire, and  
8 miscellaneous other trial motions, if there is some  
9 little motions in limine or things like that, procedural  
10 things.

11 MR. WAX: Independent of what we were saying  
12 before, on September 22nd, I'm supposed to be in Alaska.  
13 We've got a trip, be leaving around the 20th, and coming  
14 back around October 3rd is what we have set. So if it's  
15 possible to accommodate that, Kathleen has always wanted  
16 to go to Alaska, and we've finally booked it.

17 THE COURT: All right. That's the -- tell me  
18 that again. That's the 20th --

19 MR. WAX: Leaving around the 20th.

20 MR. CARDANI: While he's looking for that,  
21 there will be in limine hearings on this that could  
22 consume some time, so is that built into this? I see  
23 filings date for the 13th of October.

24 MR. WAX: Or were you thinking of the in limine  
25 type motions for the September 1 round? Is that what

1 you're thinking?

2 THE COURT: No. The motions you can file, I  
3 want you to file early. But in a case like this, there  
4 will be some little miscellaneous things later.

5 Why don't we have -- we'll move that pretrial  
6 conference into November when Steve gets back. Let's  
7 say the 9th of November. And on that date, we'll hear  
8 other motions, later filed motions.

9 MR. CARDANI: In limine type of motions?

10 THE COURT: Yeah.

11 MR. CARDANI: Okay.

12 THE COURT: And preserve -- on -- Lea, preserve  
13 a couple of days for each of those more -- when I say  
14 motion hearings, I realize we have calendars on some of  
15 those Tuesdays, and so on. We'll adjust.

16 MR. WAX: Judge, I'm sorry, I may have  
17 misspoken. The day I'm not here is September 22nd.

18 THE COURT: Oh, okay. That's not what I  
19 understood.

20 MR. WAX: Sorry. I'm supposed to leave --  
21 we're going to leave on the 20th, and then I'll be back  
22 in the office Monday, October 5. So it's the 22nd date  
23 that's the -- that poses the problem for me.  
24 October 26th was --

25 THE COURT: The problem is that the government

1 needs a chance to respond if you file things like  
2 *Daubert* motions and so on on the 1st. And so -- well --

3 MR. WAX: Can you push that 22nd date back to  
4 the October 9th or 13th or something?

5 Our sense, Judge, is we're better -- if the  
6 16th of November is the trial date, that we'd all be  
7 better off if we can keep the October 26th date for any  
8 last round of hearings, so that in the last two weeks or  
9 so we all know more or less what's coming in. If we  
10 wait for the last round of hearings until the week  
11 before the trial, I think it becomes more difficult for  
12 both parties.

13 THE COURT: Okay. What about this: If we move  
14 the trial motion hearings to October 13, get the jury  
15 instructions, voir dire, and other trial motions on the  
16 30th of October, pretrial conference and remaining  
17 motions on the 16th, and start the trial on the 30th.

18 MR. MATASAR: Yeah, good.

19 THE COURT: The first week we will not have --  
20 well, is Thanksgiving --

21 MR. WAX: Thanksgiving is the 26th.

22 THE CLERK: Jurors are often gone.

23 THE COURT: We can start it on the 30th.

24 MR. MATASAR: Fine.

25 THE COURT: And that first week's trial, the

1 schedule will go something like this: We'll pick the  
2 jury and have opening statements on Monday and Tuesday.  
3 We'll start the evidence on Friday the 4th. If any of  
4 you want to know why, I'm happy to explain it.

5 MR. CARDANI: I think we're about to hear it.

6 THE COURT: The Beavers are here on the 3rd.  
7 They are playing on a Thursday this year. And I'll have  
8 150 people here, so I'm going to take the day before to  
9 get ready.

10 MR. WAX: That's good, the jurors will  
11 appreciate it.

12 THE COURT: They'll like it, too.

13 MR. CARDANI: Monday and Tuesday, jury  
14 selection, opening. Wednesday and Thursday, down.

15 THE COURT: It won't take us two days to do  
16 that, but we'll -- if there is some other little  
17 pretrial things to clean up, we'll do that then.

18 MR. MATASAR: That's great.

19 THE COURT: And maybe I'll have ruled on the  
20 exhibits by then, but if not, I'll do that before we  
21 start taking any evidence --

22 MR. WAX: I think --

23 THE COURT: -- to the vast extent we can.

24 MR. WAX: -- Judge, what would be useful, which  
25 we've done in some other cases, and we'll try to get

1 together with the government and see what we can agree  
2 on and get as much stuff pre-admitted as we can.

3 THE COURT: I expect you to do that. If some  
4 need rulings, I'll probably try to make them in advance,  
5 too.

6 MR. WAX: So in terms of other stuff that we  
7 had had on our list that we hoped to address today,  
8 Judge, we have three motions pending on which we need  
9 rulings. The one is the communication between and among  
10 the defense about the document. And I don't know if you  
11 want us to argue that at all right now but --

12 THE COURT: No.

13 MR. WAX: -- we need a ruling on that so we can  
14 figure out what -- where to go with that.

15 In the nonclassified discovery motions, we  
16 still disagree with the government about the scope of  
17 their *Brady* obligation, what is *Brady* material. And we  
18 argued that previously about character type evidence, if  
19 you want to call it that, although I think it goes  
20 directly to the intent issues. We just need a ruling on  
21 that because we're in disagreement.

22 We had asked previously for a ruling on the  
23 computer discovery issues. It appears as though we have  
24 that resolved. We've had two meetings now with the  
25 government expert and we're awaiting a report which we

1 understand will give us not the actual documents but  
2 will give us a very direct guide. So in terms of our  
3 previous request for you to rule on the discovery of  
4 computer issues, I don't think you need to attend to  
5 that today. It looks like we have that worked out.  
6 Which means, I think, that we have two things on the  
7 table on which we need rulings, as we see it.

8 THE COURT: Do either of you want to be heard  
9 further on that?

10 MR. CARDANI: Well --

11 MR. GORDER: Let me jump in, Your Honor, at  
12 least on the issue about them communicating about this  
13 sealed document.

14 THE COURT: Yes.

15 MR. GORDER: As you know, Mr. Cardani and I are  
16 not privy to it, so we are kind of shooting in the dark  
17 here. You've had an opportunity to review the  
18 government's pleadings, and may be able to make some  
19 decisions as to how relevant that would be. If you feel  
20 it's necessary, they can go through the court security  
21 officer and arrange somehow -- they would probably have  
22 to go to Washington, D.C. to discuss what they want to  
23 discuss between themselves.

24 MR. CARDANI: Or with the court.

25 MR. GORDER: Or with the court. If it's with



1 the court, I think we would ask that Mr. Sandoval be  
2 allowed to participate. And beyond that, Mr. Cardani  
3 and I really can't take a position because we don't know  
4 what you're talking about.

5 THE COURT: When you filed the brief, did the  
6 court security officer bring a computer out here?

7 MR. WAX: Yes, yeah, we worked on that,  
8 although I think at the end of the day, she believed  
9 that we weren't putting anything class -- anything that  
10 required that kind of treatment, and that we could have  
11 actually just done it on our system.

12 THE COURT: You want to go beyond that?

13 MR. WAX: Well, what we've requested with  
14 respect to the document in our communication is --

15 THE COURT: We don't need any more on that.

16 Now, on other discovery, where are you?

17 MR. CARDANI: Well, I think we're just fine.

18 The disagreement seems to be about if there are acts  
19 of -- noncriminal acts, activity that's not criminal,  
20 and I don't mean to belittle the request, but in us  
21 screening everything that we've turned over, which has  
22 been substantial, is every time that we have evidence of  
23 Mr. Sedaghaty not involved in criminal activity is that  
24 discoverable, we think not, under Rule 16, under *Brady*,  
25 *Jencks*, *Giglio*, anything. So I don't know what more --

1 is there anything else to the disagreement?

2 MR. MATASAR: I mean, we think it is. Not so  
3 much helping an old lady across the street but a lot of  
4 the things that we feel are in the government's file  
5 cabinet, if you will, that they haven't turned over  
6 include positive things, comments about the defendant,  
7 comments by the defendant, which we believe would be  
8 useful in preparing for trial, and maybe even  
9 admissible.

10 MR. WAX: It goes directly to his intent.

11 MR. MATASAR: State of mind.

12 MR. WAX: State of mind, which is one of the  
13 key elements in the indictment that, you know, he did  
14 certain things with respect to the tax return for a  
15 particular purpose. And we believe that evidence on  
16 classified and unclassified that reflects on his intent  
17 with respect to his activities to engage in peaceful,  
18 charitable, and helpful things, as opposed to violent,  
19 pro-mujahideen things, goes directly to an element the  
20 government has alleged, and is therefore exculpatory.  
21 And that's our disagreement.

22 THE COURT: Okay. That's fine. I understand  
23 that. That's what I thought. But it's refreshed for  
24 me. I'm going to give you a little minute order, order  
25 in writing on these things.

1 MR. MATASAR: We had written -- I think as far  
2 as whether we can talk about the secret thing, we -- our  
3 papers pretty much reflect our arguments, so we really  
4 don't have to restate it here. I think we have two  
5 papers.

6 THE COURT: I have them.

7 MR. MATASAR: You have them, yeah, I know that,  
8 so we're good.

9 THE COURT: I agree. Anything else? I've got  
10 bankers here from three banks -- four banks right now.

11 MR. MATASAR: Great. Throw them in jail, or at  
12 least get them indicted.

13 THE COURT: They feel like they are in jail  
14 already.

15 MR. CARDANI: Judge, will this schedule be  
16 reduced to a minute order?

17 THE COURT: You'll get a better copy than this.

18 (The proceedings were concluded at 2:26 p.m.)  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
CERTIFICATE

I, Deborah Wilhelm, Certified Shorthand Reporter for the State of Oregon, do hereby certify that I was present at and reported in machine shorthand the oral proceedings had in the above-entitled matter. I hereby certify that the foregoing is a true and correct transcript, to the best of my skill and ability, dated this 30th day of June, 2009.



*Deborah Wilhelm*  
Deborah Wilhelm, RPR  
Certified Shorthand Reporter  
Certificate No. 00-0363